

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

Wilson Earl Love,

Plaintiff,

v.

The State of Nevada,

Defendant.

Case No. 2:23-cv-00484-APG-DJA

**Order**

Before the Court is Plaintiff's motion to request service (ECF No. 20) and motion to amend his complaint (ECF No. 22). Because it is Plaintiff's responsibility to serve Defendants, the Court denies Plaintiff's motion to request service. Because Plaintiff's proposed amendment would be futile, the Court denies the motion to amend without prejudice.

**I. Discussion.**

**A. *Plaintiff's motion to request service.***

Plaintiff's motion to request service asks that the Court serve the Defendants. However, it is Plaintiff's responsibility, not the Court's, to serve the Defendants. Service of summons is governed by Federal Rule of Civil Procedure 4. The Court thus denies Plaintiff's motion to request service.

**B. *Plaintiff's motion to amend his complaint.***

Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, "[t]he court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). "The court considers five factors [under Rule 15] in assessing the propriety of leave to amend—bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended the complaint." *United States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011).

Plaintiff's amended complaint alleges that, on March 4th, 1997, the State of Nevada "filed the Judgment of Conviction (Jury Trial) in District Dept. #16, C#136024," "without cause" and

1 thus violated his Fourth and Fourteenth Amendment rights by falsely imprisoning him. Plaintiff  
 2 also appears to allege a claim for malicious prosecution. Plaintiff's amendment is futile for two  
 3 reasons: (1) the State of Nevada's Eleventh Amendment immunity; and (2) the statute of  
 4 limitations.

5 1. Eleventh Amendment immunity.

6 Plaintiff's claims against the State of Nevada fail because "[t]he Eleventh Amendment  
 7 prohibits lawsuits against a state or its agencies in federal court unless the state consents to waiver  
 8 of its immunity." *Halverson v. Nevada Commission on Judicial Discipline*, No. 2:08-cv-1006-  
 9 RCJ-LRL, 2009 WL 10708909, at \*3 (D. Nev. March 26, 2009) (citing *Alabama v. Pugh*, 438  
 10 U.S. 781, 781-82 (1978)). Even though Plaintiff's claims arise under 42 U.S.C. § 1983, which  
 11 provides a private cause of action for violations of the U.S. Constitution, that does not override  
 12 the State's Eleventh Amendment immunity. *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994)  
 13 (affirming that it is 42 U.S.C. § 1983 that provides a federal cause of action for the deprivation of  
 14 rights secured by the United States Constitution); *Chapman v. Houston Welfare Rights Org.*, 441  
 15 U.S. 600, 617-18 (1979) (explaining that 42 U.S.C. § 1983 was enacted to create a private cause  
 16 of action for violations of the United States Constitution); *Halverson v. Nevada Commission on*  
 17 *Judicial Discipline*, No. 2:08-cv-1006-RCJ-LRL, 2009 WL 10708909, at \*3 (D. Nev. March 26,  
 18 2009) (explaining that a § 1983 claim does not override Nevada's Eleventh Amendment  
 19 immunity).

20 2. The statute of limitations.

21 Plaintiff's claims are likely barred by the statute of limitations. "Section 1983 does not  
 22 contain its own statute of limitations; instead, federal courts borrow from the statute of limitations  
 23 applicable to personal injury claims in the forum state." *Love v. Public Defender's Office*, No.  
 24 2:21-cv-01175-JAD-VCF, 2021 WL 4941993, at \*2 (D. Nev. Oct. 22, 2021) (citing *Wilson v.*  
 25 *Garcia*, 471 U.S. 261, 279-280 (1985)). "In Nevada, the statute of limitations for personal injury  
 26 claims, and therefore § 1983 actions, is two years." *Id.* (citing Nev. Rev. Stat. § 11.190(4)(e)).  
 27 "A statute of limitations begins to run on the date on which the plaintiff's claim accrues."  
 28 *Pouncil v. Titon*, 704 F.3d 568, 573 (9th Cir. 2012) (citation omitted). "[T]he accrual date of a

1 § 1983 cause of action is a question of federal law[.]” *Wallace v. Kato*, 549 U.S. 384, 388 (2007).  
2 Accrual occurs when the plaintiff has a “complete and present cause of action.” *Bay Area*  
3 *Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201  
4 (1997).

5 In the context of a false imprisonment claim brought under section 1983, the Supreme  
6 Court held that the statute of limitations begins to run “when the alleged false imprisonment  
7 ends.” *Ritter v. Marshowski*, No. 3:12-cv-00194-LRH-WGC, 2015 WL 795007, at \*4 (D. Nev.  
8 Feb. 25, 2015) (citing *Wallace*, 549 U.S. at 389). The Court stated that false imprisonment  
9 consists of “detention *without legal process*” and as such “ends once the victim becomes held  
10 *pursuant to such process*—when, for example, he is bound over by a magistrate or arraigned on  
11 charges.” *Id.* (citations omitted) (emphasis original). “Thereafter, unlawful detention forms part  
12 of the damages for the ‘entirely distinct’ tort of malicious prosecution, which remedies detention  
13 accompanied, not by absence of legal process, but by *wrongful institution* of legal process.” *Id.*  
14 (quoting *Wallace*, 549 U.S. at 390) (citations omitted) (emphasis original). In other words:  
15 damages for a false imprisonment claim can be sought from the “time of detention up until the  
16 issuance of process or arraignment, but not more. *Id.* From that point on, any damages  
17 recoverable must be based on a malicious prosecution claim and on the wrongful use of judicial  
18 process rather than detention itself.” *Id.* Malicious prosecution claims run from the time the  
19 underlying criminal proceedings have resolved in the plaintiff’s favor. *McDonough v. Smith*, 139  
20 S.Ct. 2149, 2156 (2019).

21 Here, because false imprisonment is detention without legal process, it is unclear whether  
22 Plaintiff has a claim for false imprisonment. Plaintiff states that he was convicted in 1997,  
23 meaning that he received some sort of legal process. And Plaintiff does not allege whether he  
24 was held at any time before that conviction without legal process. And if Plaintiff were to allege  
25 that he was held without legal process before his 1997 conviction, that false imprisonment would  
26 be barred by the two-year statute of limitations. Plaintiff’s malicious prosecution claim also fails  
27 because Plaintiff has not alleged if or when the criminal charges were dismissed or resolved in his  
28

1 favor. Without this date and this factual basis, the Court cannot find that Plaintiff has alleged a  
2 colorable claim for malicious prosecution.

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4 **IT IS THEREFORE ORDERED** that Plaintiff's motion to serve Defendants (ECF No.  
5 20) is **denied**.

6 **IT IS FURTHER ORDERED** that Plaintiff's motion to amend his complaint (ECF No.  
7 22) is **denied without prejudice and with leave to amend**.

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9 DATED: October 11, 2023

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12 DANIEL J. ALBRECHTS  
13 UNITED STATES MAGISTRATE JUDGE  
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